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Before the
Federal Communications Commission
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 In the Matter of the Application of)

GAF BROADCASTING COMPANY, INC.,)

For Renewal of License of Station)
 WNCN (FM), New York, New York)

MM Docket No. 93-54

File No.
 BRH-910201WL

To: The Review Board

MOTION TO ENLARGE ISSUES

LISTENERS' GUILD, INC. (hereinafter "Guild"), by its attorney, David M. Rice, hereby respectfully moves, pursuant to 47 C.F.R. § 1.229, to enlarge the issues in the above-captioned hearing proceeding. Said proceeding, originally designated by *Hearing Designation Order*, 8 FCC Rcd 1742 (1993) ("HDO"), was terminated by Administrative Law Judge Joseph Chachkin by *Memorandum Opinion and Order*, released September 17, 1993 (FCC 93M-593) ("MO&O"). A timely *Notice of Appeal* to the Review Board from said MO&O was filed by the Guild on September 27, 1993, and the Guild's *Appeal* will be filed within the time prescribed by the Commission's Rules.

As explained in the Affirmation of David M. Rice, Attachment A hereto, this motion is being filed within 15 days from the time the facts upon which it is based were discovered by the Guild. See 47 C.F.R. § 1.229 (b) (3). This motion and an accompanying *Petition for Intervention* are addressed to the Review Board, since the

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issuance of the *MO&O* terminated the Presiding Officer's authority over the proceedings. See 47 C.F.R. § 1.267 (c). (The Review Board has previously denied an appeal by the Guild from a decision of the Presiding Officer denying a prior petition for intervention and motion to enlarge issues filed by the Guild following the issuance of the *HDO, GAF Broadcasting Company, Inc.*, FCC 93R-50 (released Sept. 13, 1993) (Rev. Bd.), and the Guild intends to file an Application for Review thereof within the time prescribed by the Commission's Rules.)

The Guild respectfully submits that, based upon the allegations and evidence set forth in the Affirmation of Matthew Field, Attachment B hereto, the issues designated for hearing should be enlarged to add the following issues:

- (1) To determine whether GAF Broadcasting Company, Inc. ("GAF Broadcasting"), licensee of WNCN(FM), New York, New York, and its corporate parent, GAF Corporation ("GAF") and its controlling shareholder, Samuel J. Heyman ("Heyman"), engaged in illegal acts of age discrimination in connection with the termination of the employment of Matthew Field and other employees of GAF Broadcasting, GAF and GAF subsidiaries in violation of state and/or federal law; and to determine the effect thereof on GAF Broadcasting's qualifications and fitness and on its application for renewal of its license.
- (2) To determine whether Heyman and/or GAF engaged in fraudulent and deceptive acts and practices in violation of the federal securities laws or otherwise illegal under state and/or federal law in connection with the reacquisition of shares of GAF from Matthew Field and other employees of GAF Broadcasting, GAF and GAF subsidiaries; and to determine the effect thereof on GAF Broadcasting's qualifications and fitness and on its application for renewal of its license.
- (3) To determine whether GAF Broadcasting violated Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, by failing to report to the

Commission within the time prescribed therein the pendency of the civil action filed against it by Matthew Field on July 22, 1993; and to determine the effect thereof on GAF Broadcasting's qualifications and fitness and on its application for renewal of its license.

The First Proposed New Issue

The first proposed issue is based on the facts alleged in the accompanying Affirmation of Matthew Field and in his complaint against GAF Broadcasting *et al.* in the Superior Court of New Jersey. Said facts have never before been presented to the Commission and, as noted above, this *Motion* is being made within 15 days after the Guild first learned of any of said facts.

Although no previous request has been made by the Guild to add this issue, it should be noted that the Guild had raised an issue of age discrimination by GAF Broadcasting in a prior proceeding in which the Guild petitioned to deny the transfer of control of GAF Broadcasting. The Commission's denial of the Guild's *Petition to Deny* in that earlier proceeding, *Shareholders of GAF Corporation*, 7 FCC Rcd 3225 (1992), was given dispositive effect herein, *id.* at 3232 n. 8, but is presently on appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The Guild respectfully submits that Mr. Field's allegations may and should be read in light of the Guild's earlier filings, since if there has been a continuing pattern of illegal conduct, the specific incidents which Mr. Field describes should be regarded as more severe than if they were isolated incidents of misconduct. It should also be noted that the *HDO* in the present proceeding separated all EEO issues from what then was the comparative hearing, and referred such issues to the Mass Media Bureau's EEO branch. 8 FCC Rcd at 1742-43 n. 1, NOTE.

The Second Proposed New Issue

The second issue proposed to be added is also based on facts alleged in the Affirmation of Matthew Field and in his complaint against GAF Broadcasting et al. in the Superior Court of New Jersey. Said facts have never before been presented to the Commission and, as noted above, this *Motion* is being made within 15 days after the Guild first learned of any of said facts.

Although no previous request has been made by the Guild to add this issue, it should be noted that in the prior transfer of control proceeding the Guild had raised issues relating to criminal federal securities fraud charges against GAF and a senior officer of GAF, and the possible involvement of Heyman in such illegal conduct. The Commission's denial of the Guild's *Petition to Deny* in that earlier proceeding, *Shareholders of GAF Corporation*, 7 FCC Rcd 3225 (1992), was given dispositive effect herein, *id.* at 3232 n. 8, but is presently on appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The Guild again respectfully submits that Mr. Field's allegations may and should be read in light of the Guild's earlier filings, since if there has been a continuing pattern of illegal conduct,¹ the specific incidents which Mr. Field describes should be regarded as more severe than if they were isolated incidents of misconduct.

The Third Proposed New Issue

The third issue proposed to be added is based on the fact that GAF Broadcasting did not timely amend its renewal application to report to the Commission the filing

1. No final adjudication of the underlying merits of the criminal charges was ever made. The conviction of GAF and its Vice Chairman was reversed and remanded for retrial, *United States v. GAF Corp.*, 928 F.2d 1253 (2d Cir. 1991), but the Government decided not to proceed to what would have been a fourth trial, and dismissed the indictment.

by Mr. Field of his complaint against GAF Broadcasting et al. in the Superior Court of New Jersey, as required by Rule 1.65 of the Commission's Rules, 47 C.F.R. § 1.65. Such an amendment (which refers only to Mr. Field's allegations of age discrimination) was not transmitted to the Commission until September 29, 1993, and was not received by the Guild's counsel until October 7, 1993. See Attachment C hereto. Accordingly, this *Motion* is being made well within 15 days after the Guild first learned of the facts upon which this proposed issue is based.

The Guild respectfully submits that by reason of its long familiarity with the operation of WNCN and with the activities of its licensee, GAF Broadcasting, and the parent and principals thereof, it is well qualified to assist the Commission in adducing evidence upon each of the foregoing proposed new issues. The participation of the Guild is particularly appropriate in light of the dismissal of both of the competing applications originally designated for hearing.

CONCLUSION

In light of the foregoing, the hearing should be reopened and the hearing issues should be enlarged to encompass each of the proposed issues set forth above, and the Guild should be permitted to participate fully as a party in interest with respect to all subsequent proceedings thereon.

Dated: October 8, 1993

Respectfully submitted,



David M. Rice
One Old Country Road
Carle Place, New York 11514
(516) 747-7979

Attorney for Listeners' Guild, Inc.

ATTACHMENT A

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Following receipt of the release, I immediately attempted to contact Mr. Field's attorney, Joseph Paranac, Jr., Esq., but I was unable to speak with him until he returned to his office on September 27, 1993. He subsequently arranged a conference call with Mr. Field, in the course of which the three of us discussed the matters that ultimately were incorporated into Mr. Field's affirmation.

I declare and affirm under penalty of perjury that the foregoing is true and correct.

Executed on October 8, 1993.

A handwritten signature in cursive script, appearing to read "David M. Rice", is written over a horizontal line.

David M. Rice

F.M MEDIA / 392 CENTRAL PARK WEST SUITE 16-C / NY NY 10025

CONTACT: MATT FIELD
(212)749-6645

WNCN PARENT GAF SUED BY EX-GENERAL MANAGER

September 13, 1993

New York, NY

FOR IMMEDIATE RELEASE

Matthew Field, who for 16 years led WNCN, New York's "younger" classical music station, to success, is suing the station's owner, GAF Corporation in Wayne, New Jersey for damages relating to his dismissal at the end of 1992. The charges relate to age discrimination and stock fraud.

Mr. Field, 49, was successful in positioning WNCN to appeal to a young affluent audience -- a move which led the station to its first profitability in 1981. After the station's highest-ever billing month (November 1992) Field was dismissed in favor of a younger employee.

Mr. Field's complaint, which was filed in New Jersey Superior Court, alleges that GAF, the company's Chairman, Samuel Heyman, and Executive Vice President, Carl Eckardt, conspired to defraud Field of his stock in GAF. The stock, purchased by

Field as part of GAF's leveraged buyout in 1989, appreciates in value annually, and Field's dismissal will deprive him of nearly

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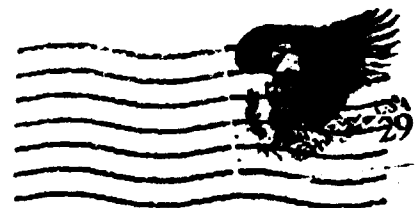
two million dollars. Field accuses GAF of a pattern of dismissing older employees -- especially those who participated in the LBO. Of 75 original investors, only about 50 remain with the company today.

"I feel the company has fallen victim to unbridled greed," said Field. "Heyman and Eckardt have taken the soul from WNCN and I hope their actions are taken into account regarding their fitness to hold an FCC license."

WNCN's license renewal will be the subject of an FCC hearing in the fall. Parent GAF (which owns chemical company International Specialty Products and GAF Building Materials Corp. as well as GAF Broadcasting Company) was convicted of securities charges several years ago, but the conviction was overturned on a technicality. The company is also battling numerous suits relating to workers in its asbestos manufacturing operations.

Field is represented by Joseph Paronac, Jr. of the New Jersey law firm Jasinski and Bisceglie, Ten Park Place, Newark, NJ 07012. Phone (201) 824-9700.

MATTHEW FIELD
392 CENTRAL PARK WEST
APARTMENT 16-C
NEW YORK, NY 10025



David M. Rice, Esq.
One Old Country Road
Fifth Floor
Carle Place, NY 11514

11514-1251 55



Before the
Federal Communications Commission
 Washington, D.C. 20554

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In the Matter of the Application of)	
)	File No.
GAF BROADCASTING COMPANY, INC.,)	BRH-910201WL
)	
For Renewal of License of Station)	
WNCN (FM), New York, New York)	
)	
.....)	
STATE OF NEW YORK)		
COUNTY OF NEW YORK)	Ss:	

MATTHEW FIELD hereby affirms as follows:

From November 1976 through December 1992 I was employed by GAF Broadcasting Company, Inc. ("GAF Broadcasting"), the licensee of Station WNCN(FM), New York, New York. Initially I served as Program Director of WNCN, and in 1980 I was promoted to the position of General Manager of WNCN. In 1987 I became Senior Vice President and General Manager of GAF Broadcasting, which position I held until my employment was terminated in December 1992.

I performed my duties in each of those positions in what I believe to have been exemplary fashion, leading WNCN to awards for broadcasting excellence and to financial profitability. My repeated promotions attest that GAF and its management had a high regard for my performance and achievements. Indeed, WNCN achieved the highest advertising sales in its history in November 1992, just a month before I was discharged without warning — supposedly because of declining revenues!

Because I believe that the termination of my employment was wrongful on a number of grounds, I have commenced a civil action in the Superior Court of New Jersey against GAF Broadcasting, as well as its corporate parent, GAF Corporation ("GAF"), Samuel Heyman ("Heyman"), who is the

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Chairman and Chief Executive officer of GAF and a member of the Board of Directors of GAF Broadcasting, and Carl Eckardt ("Eckardt"), who is the Executive Vice President of GAF and a member of the Board of Directors of GAF Broadcasting. A copy of my complaint in said action is annexed as Attachment A hereto. To the best of my knowledge, information and belief, the allegations of the complaint against GAF, GAF Broadcasting, Heyman and Eckardt are true and correct.

As alleged in my complaint, GAF, GAF Broadcasting, Heyman and Eckardt conspired to defraud me of the full value of the GAF stock that I purchased as part of GAF's leveraged buyout ("LBO") in 1989. By wrongfully terminating my employment last year, the defendants are depriving me of an additional approximately \$2 million that I would have become entitled to receive for my stock if my employment had continued through March 1994. Moreover, the termination of my employment forms part of what I believe is a pattern of age discrimination, both among the 75 senior managers who participated in the LBO, and within the staff at WNCN.

When I was offered an opportunity to join the management group led by Heyman that purchased GAF in the LBO that was consummated in March 1989, I invested approximately \$67,500 in GAF stock (some of which I borrowed from a bank on terms arranged by GAF), and I was required to accept various restrictions on the sale of the stock, including an obligation to sell it back to GAF when I left its employ at a price that would shift in stages over a five-year period from the original purchase price to the book value of the stock. I made this risky investment in the hope and expectation that the LBO would prove successful, and that I would ultimately earn a substantial profit on my stock. It was my understanding that this opportunity for profit was being extended to me and other managerial employees of GAF in order to make the then-proposed LBO more attractive to the financial institutions and investors that were being approached to provide the required financing. Heyman stood to gain enormously from the LBO, since he personally ended up with about 85 percent of GAF's stock.

After the LBO became effective, I and other managers who had purchased GAF stock were periodically apprised of GAF's cash-flow problems resulting from the very large debt incurred in the LBO, and were required to sustain

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freezes and cutbacks, both individually and institutionally, to help the company survive those problems.

As an individual employee, I, like many other GAF managers, had to forego increases in my compensation; I was asked to look forward to the increased value of my stock as my reward for good job performance. Yet in the years following the LBO, GAF, Heyman and Eckardt embarked on what I believe was a scheme to deprive many of those managers, including myself, from much of that increased value, by prematurely terminating our employment without any cause — other than Heyman's and Eckardt's own greed. Upon information and belief, those terminations also followed a pattern of discrimination against older employees, as all of the senior-level managers terminated were over 45 years of age. (I was 48 when my employment was terminated.) Collectively, those terminated managers received far less than the full value of their GAF shares, and the resulting gain realized by Heyman (and, to a lesser extent, Eckardt and other non-terminated managers) amounts to many millions of dollars, particularly since most of the increase in the book value of GAF's stock is, I believe, concentrated in the fourth and fifth years following the effective date of the LBO. (I alone stand to lose approximately \$2 million, since I will get only about 20 percent of what I believe the full book value of my GAF shares will ultimately be.)

As a corporate manager, I was required to implement company-wide freezes and cutbacks at WNCN despite the fact that GAF Broadcasting was quite profitable. In implementation of cutback orders from Heyman and Eckardt, Ivan Cooper, the station's Business Manager and its oldest employee, was forced to take early retirement in about 1991 and was not replaced. And in February 1992, I was ordered by Heyman and Eckardt to terminate Elise Topaz, the General Sales Manager. She accepted a severance package that included her signing a general release upon her resignation. That package and release were offered to her after Heyman and Eckardt had admitted to me that they were concerned that Ms. Topaz's termination would create the appearance of age discrimination (at approximately 53, she was then WNCN's oldest employee) and might be attacked as such. Her replacement was about 44 years old, about nine years younger than Ms. Topaz.

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Once Elise Topaz had been terminated, I was WNCN's oldest remaining employee, and before the end of 1992 I had become the latest victim. I was replaced by a 43 year old — which I believe matches the median age of the WNCN listening audience. The effect of these terminations of the oldest (and most senior) employees of WNCN, together with a number of earlier personnel decisions and employee retirements, is to leave WNCN with a staff with no one above 45 years of age. I believe that this reflects the view of Heyman and Eckardt that having a staff comprised entirely of younger employees will advance their goal of increasing WNCN's appeal to younger listeners, and thereby increasing its profitability.

I regret that GAF Broadcasting apparently has fallen victim to the unbridled greed of Heyman and Eckardt, who have virtually taken the soul from WNCN. I believe that their pattern of fraudulent and discriminatory conduct reflects adversely upon their and GAF's fitness to hold or control an FCC broadcast license, and I urge the Commission to give full and careful consideration to the matters I have discussed above and have alleged in my New Jersey Superior Court action.

I declare and affirm under penalty of perjury that the foregoing is true and correct.

Executed on October 6, 1993.


Matthew Field

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Joseph P. Parano, Jr.
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(201) 824-9700

Attorneys for Plaintiff

MATTHEW FIELD,

Plaintiff,

vs.

GAF CORPORATION, GAF
BROADCASTING COMPANY, INC.,
SAMUEL HEYMAN AND CARL ECKARDT,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - PASSAIC COUNTY
DOCKET NO. L-6044-93

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff Matthew Field, residing at 392 Central Park West, New York, New York, complaining of the Defendants, hereby alleges as follows:

THE PARTIES

1. Upon information and belief, at all material times, Defendant GAF Corporation ("GAF") is and was a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in Wayne, New Jersey. GAF is engaged in the business of, *inter alia*, manufacturing specialty chemicals and building materials.

2. Upon information and belief, at all material times, Defendant GAF Broadcasting Company, Inc. ("GAF Broadcasting") is and was a corporation organized and existing under the laws of the State of New York, having its principal place of business in New

York, New York, and is a wholly-owned subsidiary of Defendant GAF. GAF Broadcasting is engaged in the business of operating WNCN, a commercial radio station which provides classical music, cultural and other programming.

3. Upon information and belief, at all material times, Defendant Samuel Heyman is and has been the Chairman and Chief Executive Officer of Defendant GAF and a member of the Board of Directors of GAF Broadcasting.

4. Upon information and belief, at all material times, Defendant Carl Eckardt is and has been the Executive Vice President of Defendant GAF and a member of the Board of Directors of GAF Broadcasting.

FACTS COMMON TO ALL COUNTS

5. In or about November 1976, Plaintiff commenced employment with Defendant GAF Broadcasting as Program Director of WNCN.

6. Plaintiff's employment with GAF Broadcasting was marked by superior performance and a series of singular achievements. In recognition of Plaintiff's performance and achievements, Plaintiff was rewarded by Defendants with a succession of promotions, raises and bonuses.

7. As Program Director of WNCN, Plaintiff was responsible for originating and developing the unique format which WNCN has used consistently over the past sixteen years, i.e., classical and cultural programming aimed at younger listeners in the 25-54 age bracket.

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8. In addition, as Program Director, Plaintiff was responsible for crafting the public image vital to WNCN's success by, inter alia, directing its advertising campaigns, spearheading its marketing efforts, and selecting its announcers, sales staff and other personnel.

9. By 1980, as a result of Plaintiff's efforts, WNCN's audience had more than doubled from its 1976 level. In addition, through Plaintiff's efforts, WNCN's audience grew markedly younger, more affluent and more upscale. In 1976, approximately 66% of WNCN's audience was over the age of 50, and approximately 33% was over 65. By 1980, approximately 66% of WNCN's audience was under the age of 50, and only approximately 10% of the audience was over 65.

10. In recognition of Plaintiff's accomplishments, he was promoted in 1980 to the position of General Manager of WNCN. At the time of said promotion, Plaintiff was 36 years old. Mr. Robert Richer, the individual Plaintiff replaced as General Manager of WNCN, was, upon information and belief, approximately 50 years old.

11. As General Manager, Plaintiff was responsible for the overall management and supervision of WNCN's activities, including its format, program content and marketing and advertising efforts.

12. In 1981, due to Plaintiff's superior performance as General Manager, WNCN, after years of losses, earned a profit for the first time in its history. Since 1981, WNCN has remained consistently profitable.

13. During Plaintiff's tenure as General Manager, WNCN was the recipient of numerous awards for broadcasting excellence, including the Peabody Award, the Armstrong Award, the Billboard Magazine Award, the International Radio Festival Award, and the Cua Golden Apple Award. Those awards were given to WNCN as a direct result of Plaintiff's superlative performance as General Manager.

14. In or about 1987, in recognition of Plaintiff's achievements as General Manager, Plaintiff was named Senior Vice President and General Manager of GAF Broadcasting.

15. In or about early 1989, as part of a leveraged buyout of Defendant GAF by Defendant Heyman, Defendant Eckardt, and other members of senior management, Plaintiff, along with other high-ranking GAF executives, was offered the opportunity to purchase a number of shares of preferred and common stock in GAF.

16. Pursuant to said offer, on or about March 28, 1989, Plaintiff, along with approximately 74 other high-ranking GAF executives, entered into a Management Stock Subscription Agreement ("Subscription Agreement"), with Newco Holdings, Inc. ("Newco"), a corporation which had been organized to effect the acquisition of GAF by its senior management group. The Subscription Agreement provided, inter alia, that, except in certain limited circumstances, Plaintiff was prohibited during the period from March 28, 1989 through March 28, 1996 (hereinafter the "restricted period") from selling, assigning or transferring the GAF stock he had purchased.

17. As part of the restrictions imposed by it on the transfer, assignment or sale of GAF stock purchased by Plaintiff, the Subscription Agreement provided that if Plaintiff left GAF's employ at any time during the restricted period, Plaintiff would be obligated to sell back to GAF, at GAF's option, all of the preferred and common stock he had purchased. Under the Subscription Agreement, the purchase price for the stock hinged on the book value of the stock on the date of termination and was determined in accordance with the following formula:

- (a) if employment was terminated prior to the first anniversary of the merger between Newco & GAF (the "merger date"), the purchase price was \$10.00 per share (hereinafter the "Common Stock Purchase Price");
- (b) if employment was terminated between the first and second anniversaries of the merger date, the purchase price was the sum of 80% of the Common Stock Purchase Price plus 20% of the stock's book value;
- (c) if employment was terminated between the second and third anniversaries of the merger date, the purchase price was the sum of 60% of the Common Stock Purchase Price plus 40% of the stock's book value;
- (d) if employment was terminated between the third and fourth anniversaries of the merger date, the purchase price was the sum of 40% of the Common Stock Purchase Price plus 60% of the stock's book value;

- (e) if employment was terminated between the fourth and fifth anniversaries of the merger date, the purchase price was the sum of 20% of the Common Stock Purchase Price plus 80% of the stock's book value; and
- (f) if employment was terminated on or after the fifth anniversary of the merger date, the purchase price was 100% of the stock's book value.

18. Upon information and belief, the Newco and GAF merger date referred to in Paragraph 17 hereof was March 28, 1989.

19. In or about February 1992, Defendants terminated Elise Topaz, the General Sales Manager of WNCN, who was approximately 53 years old, and replaced her with Junior Winoker, who was approximately 44 years old. At the time they made the termination decision, Defendants Heyman and Eckardt admitted to Plaintiff that they were concerned about Defendants' liability if Ms. Topaz filed an age discrimination claim.

20. As a result of the termination of Ms. Topaz, Plaintiff, at age 47, was the oldest remaining employee of GAF Broadcasting.

21. In December 1992, Plaintiff was advised by Defendant Eckardt that he was being terminated from his employment because WNCN's revenues were declining.

22. Prior to this time, Plaintiff had received no oral or written warnings concerning either his performance as General Manager or WNCN's sales revenues.

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23. In fact, in November 1992, the month prior to Plaintiff's termination, WNCN's advertising sales were the highest in its history.

24. Defendants replaced Plaintiff with Randy Bongarten, age 43. Upon information and belief, the median age of WNCN's audience is 43 years.

25. By letter dated January 8, 1993, Defendant GAF notified Plaintiff that, pursuant to the Subscription Agreement, it was electing to purchase the GAF common and preferred stock owned by Plaintiff.

26. In or about late 1992, Plaintiff was advised by Defendant that, at the time of his termination, the book value of the GAF common stock he purchased was \$203.00 a share.

27. Because Plaintiff was terminated a short time prior to the fourth anniversary of the GAF-Newco merger date, he will receive, pursuant to the Subscription Agreement, only 60% of the common stock's book value, or approximately \$121.00 a share.

28. When Plaintiff purchased the GAF common stock in March 1989, the book value of said stock was \$10.00 a share. By late 1992, the book value of said stock had increased to \$203.00 a share. Upon information and belief based, inter alia, on representations by numerous members of GAF senior management made to and relied on by Plaintiff, by March 28, 1994, the fifth anniversary of the Newco-GAF merger date, the book value of the GAF common stock purchased by Plaintiff will be approximately \$400.00 a share.

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29. Upon information and belief, of the 75 high-level executives who purchased GAF common stock pursuant to the Subscription Agreement, only approximately 50 remain employed at GAF. The other approximately 25 senior executives, including Plaintiff, have been terminated by GAF.

30. Upon information and belief, pursuant to the Subscription Agreement, GAF has elected to purchase the common stock from each of the 21 senior executives who were terminated. Upon information and belief, each of the 21 executives who have been terminated by GAF have been over 45 years of age and each has received far less than the full book value of the common stock he or she purchased.

FIRST COUNT

31. Plaintiff repeats and realleges the allegations contained in paragraphs 1-30 hereof as if fully set forth at length herein.

32. Upon information and belief, during the period since March 29, 1989, Defendants have engaged in a pattern and practice of terminating older executives.

33. By terminating Plaintiff, Defendants discriminated against him because of his age in violation of the New York Human Rights Law, Executive Law § 290 et seq., and the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1 et seq.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) ordering reinstatement of Plaintiff to the position of Senior Vice President and General Manager or, in lieu of reinstatement, awarding Plaintiff front salary and

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benefits for the period remaining until Plaintiff's retirement;

- (b) awarding Plaintiff back salary and fringe benefits up to the date of reinstatement;
- (c) awarding Plaintiff compensatory damages for, inter alia, emotional distress, mental anguish, humiliation, and physical pain and discomfort;
- (d) awarding Plaintiff punitive damages;
- (e) awarding Plaintiff costs and attorneys' fees; and
- (f) granting Plaintiff such other relief as the Court may deem just and proper.

SECOND COUNT

34. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 33 hereof as if fully set forth at length herein.

35. By, inter alia, terminating Plaintiff and depriving him of the full value of his common stock, Defendants Heyman & Eckardt intentionally and maliciously interfered with Plaintiff's prospective contractual and economic advantage, and thereby caused Plaintiff substantial economic loss.

WHEREFORE, Plaintiff demands judgment against Defendants Heyman and Eckardt:

- (a) awarding Plaintiff compensatory damages;
- (b) awarding Plaintiff punitive damages;
- (c) awarding Plaintiff costs and attorneys' fees; and

- (d) granting Plaintiff such other relief as the Court may deem just and proper.

THIRD COUNT

36. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 35 hereof as if fully set forth at length herein.

37. By, inter alia, terminating Plaintiff and depriving him of the full value of his common stock, Defendants breached the covenant of good faith and fair dealing inherent in the Management Stock Subscription Agreement.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) awarding Plaintiff compensatory damages;
- (b) awarding Plaintiff costs and attorneys' fees; and
- (c) awarding Plaintiff such other relief as the Court deems just and proper.

FOURTH COUNT

38. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 37 hereof as if fully set forth at least herein.

39. In or about early 1989, Defendants, in order to induce Plaintiff to enter into the Management Stock Subscription Agreement, represented to Plaintiff that, by 1994, the book value of the common stock he was offered would appreciate and he would earn a substantial return on his investment.

40. Plaintiff, relying on Defendants' aforesaid representations, entered into the Management Stock Subscription Agreement.

41. Defendants had no intention of allowing Plaintiff to retain the common stock he purchased until 1994. Accordingly, Defendants' aforesaid representations were false and were known by Defendants to be false when made, or with reckless disregard of their falsity.

42. As a result of the aforesaid fraudulent actions of Defendants, Plaintiff has been damaged to his detriment.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) awarding Plaintiff compensatory damages;
- (b) awarding Plaintiff punitive damages;
- (c) awarding Plaintiff costs and attorneys' fees; and
- (d) granting Plaintiff such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues raised in the Complaint.

CERTIFICATION

Plaintiff hereby certifies that the matter in controversy is not the subject of any other proceeding pending in any Court and is not the subject of any pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.